

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

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**Decision Record
and
Finding of No Significant Impact**

for

**Temporary Closure of Selected Routes of Travel in
Lower Chemehuevi Valley, San Bernardino County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEEDLES FIELD OFFICE
LAKE HAVASU FIELD OFFICE**

Environmental Assessment CA-690-EA01-18

Approved By:

**/s/ _____
Molly S. Brady
Field Manager
Needles Field Office**

Date

**/s/ _____
Donald Ellsworth
Field Manager
Lake Havasu Field Office**

Date

DECISION

Based on our review of Environmental Assessment CA-690-EA01-18 (EA) and consideration of nine public comments submitted on the EA, it is our decision to approve the temporary closure to motorized vehicles of twenty-two (22) routes totaling fifteen (15) miles on public lands in the lower Chemehuevi Valley, located in eastern San Bernardino County, California. The majority of the closed routes are on public lands managed by the Bureau of Land Management (BLM) California Needles Field Office and located in the California Desert Conservation Area (CDCA), while a small portion of the routes are located on public lands managed by the BLM Arizona Lake Havasu Field Office as described in the EA. The closed routes are displayed on the attached maps.

The lengths of the closed routes vary from less than a quarter-mile to two miles. Routes which are temporarily closed include: 690517, 690522, 690523, 690524, 690525, 690527, 690528, 690529, 690530, 690531, 690532, 690533, 690534, 690536, 690537, 690538, 690540, 690542, 690543, 690544, 690546, and 690896. Route numbers 690523, 690524, 690527, 690528, and 690529 will be closed except to persons holding valid mining claims accessible only by these otherwise closed routes. All other routes in the area will be considered as open, unless otherwise posted. Less than one-quarter mile of route numbers 690532 and 690533 extend onto public lands managed by the BLM's Arizona Lake Havasu Field Office. All remaining routes are located on public lands administered by the Needles Field Office of the California Desert District.

As a result of public comments, we modified our implementation strategy to include details regarding the frequency of monitoring and actions to enforce compliance. These changes are reflected in the following discussion of our implementation strategy for closure, monitoring and enforcement.

Physical closure of routes will be accomplished in two phases. Phase one will include installing red carsonite markers at the closed route entrances. Reflective signs identifying the routes as closed and why they have been temporarily closed will be installed next to the carsonite markers. If there are several routes within close proximity of each other, explanation signs will be strategically placed amongst them to avoid sign proliferation.

Phase two may be implemented any time during the first three months after the closure is in effect at the discretion of the authorized officer at those locations where monitoring reports indicate that there are excessive violations and adverse impacts to sensitive resources. If, after three months, there are chronic violations, phase two must be implemented at all locations which have evidence of closure violations. Phase two involves the installation of post and cable barriers at the entrance to a closed route in place of carsonite markers. Post holes will be excavated at road shoulders using a Bobcat auger assembly. Measures to protect harm to the desert tortoise and its habitat during the installation of post and cable barriers are set forth in Appendix A.

The closed routes will be monitored on a weekly basis to determine if there are violations of the closure (e.g, vehicle tracks). Evidence of vehicle tracks will be removed by hand-raking or use of an all-terrain vehicle pulled harrow within close proximity to the closure markers/barriers. In addition, where feasible, rocks, boulders and other natural material will be distributed over the area to discourage violations. During organized events, heavy use periods, and holiday weekends, monitoring will occur on a daily basis. Observation report forms, incident reports, and photographs will be prepared and maintained by law enforcement and park ranger personnel.

Compliance with the closure will also be pursued through a public education program. Brochures will be provided at the Havasu Landing Store, Sail Inn bulletin board, and the Chemehuevi Indian Tribal Headquarters. Brochures will also be available at Chemehuevi Valley kiosk locations, and the BLM's Needles and Lake Havasu Field Offices. Large notification signs will be placed at the kiosk locations.

We have determined it necessary to use our authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close the identified roads to motorized vehicle use to provide additional protection to threatened and endangered species listed under the Endangered Species Act (ESA). This restriction will take effect immediately and will remain in effect until a record of decision for the Northern and Eastern Colorado Desert Coordinated Management (NECO) Plan is signed. This restriction does not apply to private lands. Certain exceptions to this closure also apply to government vehicles for operations, maintenance, law enforcement, fire and other emergency purposes.

RATIONALE

This decision is necessary because desert tortoise populations throughout the California Desert have declined considerably over the last several years as a result of a variety of causes. As recognized in the EA, although not an emergency, BLM exercises its authority to immediately close these routes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise population in the CDCA and the need for affirmative action to protect and stabilize the remaining population (*Blincoe, et al. v. BLM*, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.20 et seq). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the ESA. These interim closures will provide additional protection for the desert tortoise and will prevent damage to both critical and non-critical desert tortoise habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the NECO Plan, scheduled for completion in September 2002.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when s/he determines that off-highway vehicle (OHV) use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise

populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of record of decision on the NECO Plan is not anticipated until the fall of 2002, BLM concludes immediate closure under 43 CFR 8341.2(a) is necessary.

There are numerous scientific studies indicating that OHV use and related recreational activities can have adverse impacts upon the tortoise. While the contribution to tortoise decline from being hit or picked up by people driving routes in the lower Chemehuevi Valley area is unknown, such occurrence is considered significant in some parts of the California Desert. BLM determines that the highest occurrence of uses on routes by both vehicles and tortoise occurs at generally the same times of year (spring and fall). A summary and list of references on the effects of motorized vehicles and vehicle access on the desert tortoise and its habitat are found in the References section of this Decision Record.

The BLM recognizes that the interim closures will displace some OHV users who utilized the area for recreational activities. However, BLM has made concerted efforts to minimize adverse effects to motorized recreation. BLM still allows motorized recreation opportunities on many routes throughout the lower Chemehuevi Valley area. Prior to this action opportunities for motorized recreation use in the lower Chemehuevi Valley had been reduced administratively and through the 1994 Desert Protection Act designation of the Chemehuevi Mountains and Whipple Mountains Wilderness Areas. Early in 1994 a total of 382 miles of routes existed within the Chemehuevi Valley area. In October of 1994 eighty (80) miles of routes were closed through Wilderness designation. This decision, which closes an additional 15 miles of routes, leaves approximately 287 miles of open routes still available to motorized vehicle recreation in the lower Chemehuevi Valley. The majority of the OHV recreationists in the lower Chemehuevi Valley utilize the high-use areas west of the Chemehuevi Reservation and on lands managed by the Arizona BLM Lake Havasu Field Office. The temporary route closures will not affect the high-use areas.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation regarding this closure.

Although precipitated by the Center's lawsuit, BLM has initially reviewed its current management for vehicle use in the lower Chemehuevi Valley area under the CDCA Plan as it relates to desert tortoise. As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending completion and implementation of the NECO Plan. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7 (d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species

(16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation on January 31, 2001, with the FWS on the CDCA Plan as amended and proposed to be amended in the NECO planning area. BLM initiated consultation on this interim closure on June 15, 2001. FWS issued a letter of positive concurrence on August 24, 2001. In addition BLM will complete consultation on the NECO plan prior to issuing a record of decision.

With respect to California BLM managed public lands, the interim closure of this area conforms with the CDCA Plan, as amended. The CDCA Plan contains general and specific direction for protection of listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

With respect to Arizona BLM managed public lands, the proposed action is subject to and in conformance with the Yuma District Resource Management Plan of 1985 (as amended) in accordance with Title 43 Code of Federal Regulations 1610.5-3 which, under Off-Road Vehicle Use, provides that all off highway vehicle use will be limited to existing routes of travel.

PUBLIC INVOLVEMENT

On July 30, 2001, a notice of the proposed order for temporary closure as described in EA (CA-690-EA01-18) was published in the Federal Register (66 FR 39332-39333). On the same day BLM issued a news release regarding the proposed order. On July 31, 2001 BLM distributed the EA for public review and comment.

BLM received nine comment letters; one organization submitted two separate letters which we counted as one comment. Four of the commentors generally supported the proposed closures, four generally opposed them and one neither supported nor opposed them. Although no changes in the selected routes to be closed were made as a result of public comments, we did incorporate changes to the implementation strategy as a result of public comments.

A summary of the major comments and BLM's response to those comments follows:

Comment: Provide more details about the monitoring program, e.g., frequency of monitoring, and define "excessive violations", e.g., how many "violations" of the closures will BLM tolerate before installing cables? BLM must commit to significant and frequent on-the-ground monitoring by law enforcement Rangers and resource staff.

Response: We modified the implementation strategy in response to the many comments we received on the lack of detail and definition in the monitoring and enforcement proposals. We

have identified minimum frequency requirements for monitoring (at least once per week and daily during scheduled events and heavy use periods) and defined “excessive violations” as a discretionary call by the authorized officer during the first three months (to allow time for the public to become aware of and educated about the closures) prior to initiating phase two of the physical closure strategy. After the third month, any violations of the closure will trigger phase two installation of a post and cable barrier.

Comment: BLM should install signs explaining the closure and otherwise provide for more education and public outreach to gain compliance.

Response: BLM will install reflective signs next to the carsonite marker identifying the routes as closed and why they have been temporarily closed. If there are several routes within close proximity of each other, explanation signs will be strategically placed amongst them to avoid sign proliferation. Additionally, new kiosk panels depicting the temporarily closed routes will be installed at the eastern entrance to Chemehuevi Wash. Information on the closures will also be available at the BLM’s Needles and Lake Havasu Field Offices. A brochure has been developed for distribution explaining the need for the closure. The public can also obtain information regarding the temporary closures on our web site at www.ca.blm.gov/needles.

Comment: BLM should immediately implement the temporary closure and physically block and reclaim closed routes, including using vertical mulching and other effective techniques.

Response: Physical closure of selected routes will be implemented in two phases. Phase one will include installing red carsonite markers at the closed route entrances immediately following signing of this decision record. If compliance is not obtained under phase one, phase two will be implemented which includes installation of post and cable barriers at the closed route entrances. Since this is an interim measure, complete revegetation and reclamation of the routes would be deferred until final route designation is accomplished through the NECO planning effort.

Comment: BLM should consider additional routes for permanent closure to motorized vehicles (i.e., 690513-690515, 690517, 690521, 690525-690540, 690542-690543, 690545-690546, and 690548-690549).

Response: This decision affects only those routes identified during negotiations with the CBD. Two of the selected routes were chosen because they are located in critical habitat. The other twenty routes are located in non-critical habitat. As discussed in the August 24, 2001 decision (Blincoe, et al. v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.91), non-critical habitat is important inasmuch as it provides nesting, foraging, sheltering, dispersal, and gene flow habitat for the desert tortoise (citing to the Final Rule Designating Critical Habitat, 59 Fed.Reg. 5820, February 8, 1994). The additional routes were selected for closure not only because of their possible effect on tortoise but because they were redundant routes. Final route designations within the lower Chemehuevi Valley area will occur through the NECO Plan.

Comment: The route numbers on the map are different than the route numbers in the text.

Response: Route numbers used on the maps did not include the prefix 690. However, in the

text, we included the prefix in the route numbers. The first three digits of route numbers stand for the region in which the route is located. The 690 prefix refers to routes managed by the Needles Field Office.

Comment: Disagree with the language in the EA stating that all routes in the area will be considered as open, unless otherwise posted. BLM should sign open routes and instruct the public to consider all routes closed unless signed open.

Response: Although we do sign some open routes in the Chemehuevi Valley, primarily as a means of encouraging use of the primary routes of travel, our policy of signing all closed routes is based on manageability and aesthetic considerations. First, closed signs are often important in successfully citing and prosecuting violators. In addition, we have 287 miles of open routes in the Chemehuevi Valley and we are only closing 15 miles of routes. Although a “closed unless signed open” policy has been successfully used in some areas of the desert, it would be extremely costly in this area and would have a major adverse impact on visual resource values.

Comment: Rangers should be urged to ticket on first offense and use maximum enforcement powers to discourage illegal off-roading and use of closed routes.

Response: The goal of BLM law enforcement, as well as all other non-law enforcement branches within the agency, is voluntary compliance. This goal is achieved by educating the public through programs such as Leave No Trace, Tread Lightly, regulatory and interpretive signing and displays as well as contact with law enforcement with verbal warnings and written citations. There are isolated incidents that take place on public lands where a criminal citation may be warranted but not applicable, due to the totality of the circumstances surrounding a prohibited act. Because of their training and experience in land management issues that involve prohibited acts ranging from petty offenses to felony charges being brought against the user, our law enforcement rangers are allowed the discretion of what action to take which will most likely achieve the goal of voluntary compliance by those who use public lands.

Comment: BLM should implement proposed actions this year to avoid further legal action.

Response: BLM, as required by Federal law and regulation, has abided as closely as possible and to the best of its ability in implementing actions timely closure.

Comment: BLM should adopt the “No Action” Alternative because it is the only acceptable option.

Response: The “No Action” alternative would not achieve our need to minimize adverse impacts to the desert tortoise pending completion of NECO plan.

Comment: The marking of tortoise burrows for the purpose of study may well prove to be counterproductive. By marking each site, inquisitive and destructive visitors may destroy the burrows for whatever reasons.

Response: Tortoise burrows would be marked only during the time that post and cable barriers are installed to avoid impacts to the burrows during installation. Upon completion of installation of the post and cable barriers, the markers would be removed. Stipulations for installation of the

cabling are attached in Appendix A. Burrow markers are not intended to be used for census gathering or study.

Comment: Cabling off short sections of roadways will probably destroy more natural desert than casual visitation does.

Response: We are concerned about the impacts of installing post and cable barriers as a means of enforcing road closures. For this reason we are proposing to using regulatory closure markers, interpretive signing, brochures, and public contact to try achieve compliance before we are prompted to move to the use of barriers. Only if violations continue to occur will we install post and cable barriers.

Comment: Aren't endangered species safe in the large wilderness areas adjacent to and surrounding the area designated for this temporary closing?

Response: Unfortunately most of the suitable habitat is located outside of designated Wilderness Areas which are mostly mountainous areas. Generally desert tortoise are not found in the higher elevations associated with Wilderness Areas.

Comment: Most of the roadways to be closed are only short sections of roadways that lead to various points of interest on the reservation, or as a means to travel through the desert in this neighborhood?

Response: In identifying routes to be closed, we took into consideration the need for an access network in the lower Chemehuevi Valley to serve local residents and visitors. None of the routes proposed for temporary closure block access to the Chemehuevi Reservation or to through traffic. To the extent possible, for every closed route that leads to a destination, we have maintained an open route which provides access to the same destination.

Comment: Strongly oppose closing of any public roads that would prohibit the public's use of public land and recommend that these roads remain open during the F&WS consultation.

Response: These are temporary closures and there remain a significant number of open routes available for public motorized use. The BLM has determined that these closures are necessary along with other actions to minimize the potential for further adverse impacts to the desert tortoise pending completion of the NECO plan.

Comment: Tourists visit our area for the recreational opportunities available for the public on public lands and public bodies of water. Every time the government closes a road, or access to public lands, the economy of our community suffers. If these closures are allowed to continue, few tourists will come here, and the economic vitality of the area will cease to exist.

Response: We are concerned about the economic vitality of the region. Because this decision is temporary in nature and an abundance of routes will remain open, we do not anticipate that these closures will result in any reduction in the number of visitors to or motor vehicle users in the lower Chemehuevi Valley. As previously indicated, we have maintained access to all primary destination areas including water bodies in the vicinity.

Comment: The Federal Register Notice fails to disclose scientific evidence supporting its claims. Furthermore, BLM has allowed motorized use of the proposed closed routes for 10 years (since the listing of the desert tortoise) and has had sufficient time to make an adverse determination regarding the impacts of motorized use on the desert tortoise. This decision is not a determination based on scientific evidence of adverse impacts on the tortoise as a result of motorized vehicle use; rather it is complying with stipulations agreed to in a settlement of a lawsuit.

Response: A summary of the scientific basis for our determination that motor vehicle use has had an adverse impact on the desert tortoise and its habitat is found in the References section of this Decision Record. It is true that the BLM agreed to close selected routes in the lower Chemehuevi Valley as part of a settlement on a lawsuit brought by the Center for Biological Diversity, et al. Although precipitated by the Center's lawsuit, BLM has reviewed its current management direction for the lower Chemehuevi Valley under the CDCA plan as it relates to desert tortoise and has determined that, as an interim measure, implementation of this closure will provide additional protection to the tortoise pending the completion of NECO Plana

Comment: The Federal Register Notice misstates the scope of the closures. The BLM should be analyzing all of the actions called for in the stipulated agreements in a single environmental document.

Response: BLM has considerable discretion in defining the scope of a National Environmental Policy Act (NEPA) analysis. BLM has determined that the array of actions in the stipulated agreements are not "connected actions" as defined under NEPA regulations. Specifically, the decision to close routes in the lower Chemehuevi Valley was determined not to be connected to the other actions stipulated in the agreement. Under NEPA case law, actions are connected when they are "inextricably intertwined" such that one action cannot proceed without the other. Actions are not connected actions if "each could exist without the other, although each would benefit from the other's presence".

Comment: By implying that OHV's are causing adverse impacts to the desert tortoise in the proposed closure area and by inflating the benefits of the route closures, the Federal Register Notice "chills" public comment and opposition to BLM action.

Response: The best data available was used to arrive at our decision. A summary of the scientific literature related to OHV impacts on the desert tortoise and its habitat is summarized in the Reference section of this Decision Record.

Comment: The Federal Register Notice is contrary to the Court's order. Judge Alsop clearly set forth that "The consent decrees will not and may not be asserted as a legal authority for any agency action over and above the BLM's existing statutory authority or to avoid any duties under NEPA."

Response: The information on the lawsuit was provided as relevant background information, not as the authority or basis for the decision. As previously indicated, the decision is based on our authorities under 43 CFR 8341.2a.

Comment: The BLM should have conducted a NEPA review prior to entering into the March 20, 2001 stipulation agreement, not four months after the fact.

Response: The stipulated agreement was not a final decision on this action. In accordance with NEPA regulations, prior to making our final decision, we conducted an environmental assessment to determine whether the impacts of our proposed closures would have a significant impact on the human environment and therefore warrant the preparation of an Environmental Impact Statement. We have made a finding of no significant impact in this Decision Record. Our actions have been in accordance with NEPA requirements.

Comment: The public comment period and information given were insufficient.

Response: BLM has considerable discretion as well as policy flexibility to determine the length of discretionary comment periods to facilitate public involvement within necessary time constraints. Most important, as noted earlier, these interim restrictions are temporary in nature and long-term decisions on management of public lands in this area will be made through the NECO plan. While the BLM recognizes and appreciates the burden the short public review period has on the public's ability to respond, BLM determined that immediate action was required in this action.

Comment: The "Need for Proposed Action" for closures was not adequately supported - there is no biological nor scientific justification for the proposed closure.

Response: Additional information on the need for this action is set forth in the Rationale section of this Decision Record. The biological and scientific data which identifies the impacts of motorized vehicle use on desert tortoise and its habitat is set forth in the References section of this Decision Record.

Comment: The range of alternatives is inadequate.

Response: BLM has the legal and regulatory authority to determine a reasonable range of alternatives for environmental compliance documents under NEPA. In this case, given the temporary nature of the closure, BLM determined that the proposed action and no action alternative were a reasonable range.

Comment: BLM should look at alternate solutions to reduce impacts associated with motorized-vehicle use and human activities, such as public education, more signs, more law enforcement presence, or seasonal closures between the tortoise active season.

Response: BLM will be doing extensive education and outreach in addition to the closures to protect sensitive resources. We have received funding for several years from the California OHV Grant program to provide interpretive outreach in the lower Chemehuevi Valley to protect the desert tortoise and other resources. Briefings on the need and methods to protect desert tortoise and its habitat will continue to be presented to participants at organized events. It is also anticipated that through monitoring efforts during the temporary closure, BLM will have the ability to collect data to assist them in identifying alternative measures to protect the tortoise.

Comment: The EA understates the route closures' impacts on OHV access. The EA fails to

discuss where this displaced use will go and what impacts this displaced use will have on the remaining routes and area.

Response: Displaced use is not an issue in the lower Chemehuevi Valley. Only 15 miles of routes are being closed. There are still 287 miles of routes in the lower Chemehuevi Valley. Some of these routes receive very low levels of use annually. Based on our analysis of the temporary closures, the impacts as a result of displaced use on adjacent routes will be minimal.

Comment: The EA does not provide an adequate cumulative impacts analysis. The analysis should address the cumulative effects of all the closures and actions under the stipulated agreements.

Response: It was determined that the only actions to be considered in assessing cumulative impacts were those that impacted factors in the immediate region, i.e., the lower Chemehuevi Valley. Thus, the closures of routes resulting from past Wilderness designations in the immediate vicinity were the relevant actions to which these closures contributed an incremental impact in terms of recreation opportunity.

Comment: The EA fails to assess the economic impacts of the proposed closure on the small towns and businesses that rely on recreational access to public lands in the area.

Response: Because the closures are not expected to reduce use levels in or visitors to the lower Chemehuevi Valley, there are no anticipated economic impacts to neighboring communities.

Comment: The proposed closure of public lands and roads deprives the public of a right of access and enjoyment, especially children, seniors, and the physically handicapped.

Response: No primary destinations or locations have been blocked by any of the route closures. As previously indicated, we do not anticipate a reduction in motor vehicle use within the Valley. We expect there to continue to be OHV users enjoying the area during the fall, winter and spring on the 287 miles of remaining open routes in the area.

Comment: The EA fails to assess the proposed closures' potential conflicts with federal, state, regional and local planning policies. The EA is also in violation of FLPMA itself, which requires that proposed amendments to desert recreational area management plans must be put through an extensive public participation and review process prior to adoption.

Response: The temporary closures are implemented under 43 CR 8341.2 which does not require an assessment of consistency with federal, state, and local plans, however, to the best of our knowledge, these closures do not conflict with any such plans. In the preparation of the CDCA Plan amendments through the NECO planning effort, we will be assessing whether our plan decisions are consistent with State and local plans, policies and programs through a required "Governor's consistency review" in accordance with regulations at 43 CFR 1610.

Comment: The proposed action in this Federal Register Notice and EA for the same will likely create significant direct and indirect and cumulative impacts on recreation, public safety, public access, land use consistency, and the economic health of the surrounding region and, therefore, the BLM should prepare a comprehensive EIS for the lower Chemehuevi Valley route closures,

not just an EA.

Response: Based on our analysis of the environmental impacts of this closure, we found that there were no significant impacts. No new data or information was provided to change our finding.

Comment: The temporary closures would preclude access to maintain private facilities.

Response: The proposed network of temporary route closures addressed all known private property access needs. BLM does not restrict access to private property, facilities or valid existing rights. If additional access is required to private property or facilities, BLM will work with property owners to provide that access in conformance with existing laws and regulations.

Comment: Comments questioned BLM's authority and whether BLM followed the appropriate processes: 1) a two week public comment period is insufficient; 2) BLM has no closure authority under CFR 8364.1 or under FLPMA (43 USC §1781 (d)); 3) BLM is making or extending withdrawals; 4) BLM is making decisions that only the Secretary of the Interior can make; 5) BLM cannot close areas to OHV use that were previously designated open; 6) BLM cannot close areas or trails outside critical habitat; 7) the closure is not premised on a recovery plan; 8) the temporary closure is significant and requires an EIS; 9) BLM is not complying with the Regulatory Flexibility Act and should conduct the process through proposed regulations and guidelines and involving hearings.

Response: BLM has the necessary legal and regulatory authority to make the decision in question as well as the policy flexibility to determine length of discretionary comment periods to facilitate public involvement within necessary time constraints. Official delegations of authority from the Secretary to the BLM are found in the Departmental Manual, Parts 200, 205, 235, 290, 295 and 296. Further delegation of authority to the BLM State Director and to the BLM Field Managers is found in BLM's Delegation of Authority Manual 1203 and the California Supplement to the 1203 Manual. As noted earlier, these interim closures are temporary in nature and long-term decisions on the management of lower Chemehuevi Valley will be made through the NECO Plan and EIS to be completed by September 2002, with full public involvement. Finally, the interim closures are being authorized under 43 Code of Federal Regulations 8341, not 8364, as indicated in the decision record.

APPEAL RIGHTS

This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient

justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

FINDING OF NO SIGNIFICANT IMPACT:

Environmental impacts associated with the proposed action and the alternatives have been assessed. Based upon the analysis provided in Environmental Assessment CA-690-EA01-18, we have concluded that the approved action is not a major federal action and will result in no significant impacts to the environment under the criteria in Title 40 Code of Federal Regulations Part 1508. Preparation of an Environmental Impact Statement to further analyze possible impacts is not required pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969.

Approved By:

/s/ _____
Molly S. Brady **Date**
Field Manager
Needles Field Office

/s/ _____
Donald Ellsworth **Date**
Field Manager
Lake Havasu Field Office

REFERENCES

The scope of the following literature is focused on vehicle and related impacts to the desert tortoise. It is also a desert-wide review. Some research and data apply in a general way including to this particular closure. Other citations are not applicable to this particular closure.

Literature Summary:

Boarman, William I. 1999. Threats to the desert tortoise: a critical review of the scientific literature. Review draft dated 9/21/99. U. S. Geological Survey, Western Ecological Research Center, University of California, Riverside. 88 pp.

Pp. 11- 13: Three broad impact categories are identified, including: habitat loss, degradation and fragmentation; urbanization and development; and human access into tortoise habitat.

Habitat loss may occur after many vehicles drive over an area that compresses soil and destroys vegetation. Habitat degradation changes characteristics of habitat that render it less valuable to desert tortoises, although they may still occur there. Degradation includes increased exotic weeds, lowered abundance of preferred forage due to competition with weeds, reduced cover, accumulation of trash, reduced plant productivity due to dust coating of plant leaves, soil compaction due to grazing, etc. Fragmentation is the process whereby useable habitat is broken into subunits that tend to confine tortoises, to varying degrees, resulting in diminished movement of tortoises from one unit to another. Movement is diminished by such features as railroads, highways, towns, and developments. The edge effect of fragmentation increases the influence of characteristics such as increased temperature, light, chemical inputs, exotic weeds, and increased predators. Edge effect has not been well documented with respect to the desert tortoise.

Pp. 14-15: Human access or presence in tortoise habitat may result in threats to desert tortoises that include illegal collecting. Tortoises may be crushed in their burrows by vehicles driving off road, and there are studies that indicate there is an increased amount of off-road driving in areas that have existing dirt roads. Other potentially detrimental activities that can occur near dirt roads include mineral exploration, illegal dumping of garbage and toxic wastes, release of ill tortoises, anthropogenic fire, handling and harassing of tortoises, spread of exotic weeds, and trailing of sheep. Berry (1990 as amended, 1992) reports a correlation between tortoise population declines and density of roads and trails.

Pp. 17-18: Collection of tortoises for cultural practices by recent immigrants has been reported by the U.S. Fish and Wildlife Service (1994), and by Berry et al. (1996). Human excavation of tortoise burrows was greater near dirt roads than in areas far from roads (Berry et al. 1996). There is little evidence to suggest that illegal collection of tortoises is

a widespread problem, but there is little evidence to the contrary.

P. 24: Direct mortality from vehicle hits associated with small scale mining activities, and from heavy truck traffic on dirt roads, is probable.

Pp. 26-27, 33: Fires in the western Mojave Desert have increased due to the presence of fine fuels, typically exotic grasses such as brome and split grass. Fires remove shrubs and promote the recolonization of the burned area with exotic grasses and forbes, thus perpetuating the fire cycle and removal of habitat. Fires remove native vegetation from the habitat, resulting in patches of unsuitable habitat. *Schismus barbatus* is often eaten and apparently preferred by tortoises, and has been shown empirically to deplete tortoises of nitrogen and cause weight loss (Esque 1994, Avery 1998, Nagy et al. 1998)

Pp. 28-31: Handling of desert tortoises by the public, and manipulation of the tortoise by researchers for scientific purposes, may result in detrimental effects. Desert tortoises may void their bladders when being handled, which can result in dehydration and death. Pet tortoises released back into the wild may be infected with a highly contagious upper respiratory disease. The disease may be transmitted from one tortoise to another or by humans involved in handling more than a single tortoise in an area. Taking and later releasing a tortoise out of its home range may result in stress and disruption of feeding, sheltering, and absence of cover from known burrow locations.

Pp. 50 - 51: Lower frequency sound generated from human sources propagates through the environment whereas higher frequencies attenuate (Lyon 1973). The tortoise uses low frequency sounds to communicate. The sounds they produce for communication may be masked by persistent human induced sounds. It appears that for sound to be disruptive for the desert tortoise it needs to be of long duration, such as sounds generated from high numbers of vehicles on a paved highway.

Pp. 52 + (Off-road vehicle activities, pertaining mostly to off-road vehicle play areas and not necessarily to lighter travel on dirt roads). Mortality can occur directly by crushing tortoises on the surface or in burrows, or indirectly through habitat alteration (soil compaction, vegetation loss or toxins from engine exhaust). Weinstein et al. (1992, 1996), found that low to medium densities of tortoises were associated in areas with vehicle trails. Nicholson (1978) found that there was a reduction in tortoise sign up to 880 meters from the edge of Shadow Mountain Road in an area with high off-road vehicle use. There are several accounts of tortoises being crushed by off-road vehicles, apparently being operated off of established roads, such as in open areas (Luckenbach 1975, Berry and Nicholson 1984, Bury and Marlow 1973, Bury and Luckenbach 1986). Berry (1990) reported that 4% of tortoise remains found on 14 permanent study plots were associated with impacts caused by off-road vehicle use. Campbell (1985) reported finding two tortoises killed by vehicles on dirt roads in and adjacent to the Desert Tortoise Natural Area. Bury and Luckenbach (1986) reported an immature tortoise found

crushed in a motorcycle trail. Marlow (1974) reported finding nine recently crushed tortoises in a closed area with vehicle tracks surrounding most of the carcasses.

P. 63 : Non-off-road vehicle recreation (typically involves the use of a motorized vehicle for access) and is associated with camping, nature study, rock collecting, sight-seeing, hunting and target practice. Likely impacts include handling and disturbance of tortoises; loss of habitat to camping areas, picnic areas, scenic pullouts, etc. These activities also support ravens when organic garbage is left on site.

P. 63: Hunting and target practice are associated with three additional impacts: human-caused wildfire from bullets striking rocks; tortoises entering and dying in guzzlers constructed to provide rainwater for upland game birds; and people shooting at tortoises for target practice.

P. 63: Direct impacts of roads: road kill, destruction of habitat and collapse of burrows. Indirect impacts of roads: degradation of habitat through dispersal of invasive weeds, predators, development, recreation and other human uses of the land. Boarman and Sasaki (1996) reported finding 115 tortoise carcasses along 29 km of paved highway (Highway 58) in the western Mojave Desert. These findings cannot be applied to lightly traveled dirt roads or paved roads because of differences in traffic volume and road kill rate that exist between lightly used dirt and paved roads, and major highways with high traffic volumes such as Highway 58. A tortoise depression zone occurs along (paved) highway edges and extends at least 0.4 km from either side the road in suitable habitat (Nicholson 1978, Berry and Nicholson 1984, Berry et al. 1990, LaRue 1993, Boarman and Sasaki 1996, von Seckendorff Hoff and Marlow 1997, and cf. Baepler et al. 1994). The activities resulting in the depression zone are probably mostly from road kills, but other contributing factors may include illegal collection, etc.

P. 64: The common raven, a tortoise predator, is attracted to roads in search of road kills (Boarman and Heinrich, in press).

P. 64: Tortoises may be drawn to edges and depressions associated with dirt roads because rainwater often collects there and can provide a source of drinking water. In some cases the collection of water may promote the growth of more lush and persistent vegetation. This typically occurs in the spring and late summer or fall. This would put tortoises in the path of vehicles either on the road or on the edges of roads where vehicles pull out. It could also make them more vulnerable to collection, shooting or harassment by visitors that observe the tortoises in proximity to the road.

P. 66: Vandalism is the purposeful killing or maiming of a tortoise. It includes shooting, crushing, running over, chopping off heads and turning them over and leaving them to die (Berry 1984, 1986a, Bury and Marlow 1973). Berry (1986a) found 91 tortoise carcasses showing evidence of gunshot. Evidence of gunshot was significantly higher from western

Mojave Desert study sites than those in the eastern Mojave and Colorado Deserts.

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APPENDIX A

The following stipulations will be enforced during implementation of phase II with respect to installation of post and cable barriers.

1. When installing physical barriers, a clearance survey will take place, not more than 24 hours prior to the beginning of vehicle access to the proposed work sites. At that time tortoise burrows in the area will be checked for the presence of desert tortoises. The burrows at the proposed project sites will be flagged or marked with traffic cones to avoid impact, within a 20 foot radius.
2. All project-related vehicular traffic will be confined to existing roads.
3. A tortoise observed in the immediate proximity of project activities during any phase of the project will be left to move out of the way of its own volition. Handling of tortoises is not permitted. If a tortoise is sighted at the proposed project site, activities will cease until the tortoise moves out of harms way
4. To assure observation and avoidance of any tortoise in roadways, staff will travel no more than 20 mph on all routes during tortoise active season (March 16 to October 31).
5. Staff will inspect for tortoises under vehicles prior to driving. If a tortoise is present, personnel will wait for the tortoise to move out from under the vehicle prior to driving.
6. All trash and food items will be contained in raven and coyote proof containers either in hard plastic or metal containers or within vehicles, and removed from the proposed closure sites as work is completed for the day.